

# TRANSCRIPT OF RECORD.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 471.

GEORGE BORDICK, PLAINTIFF IN ERROR,

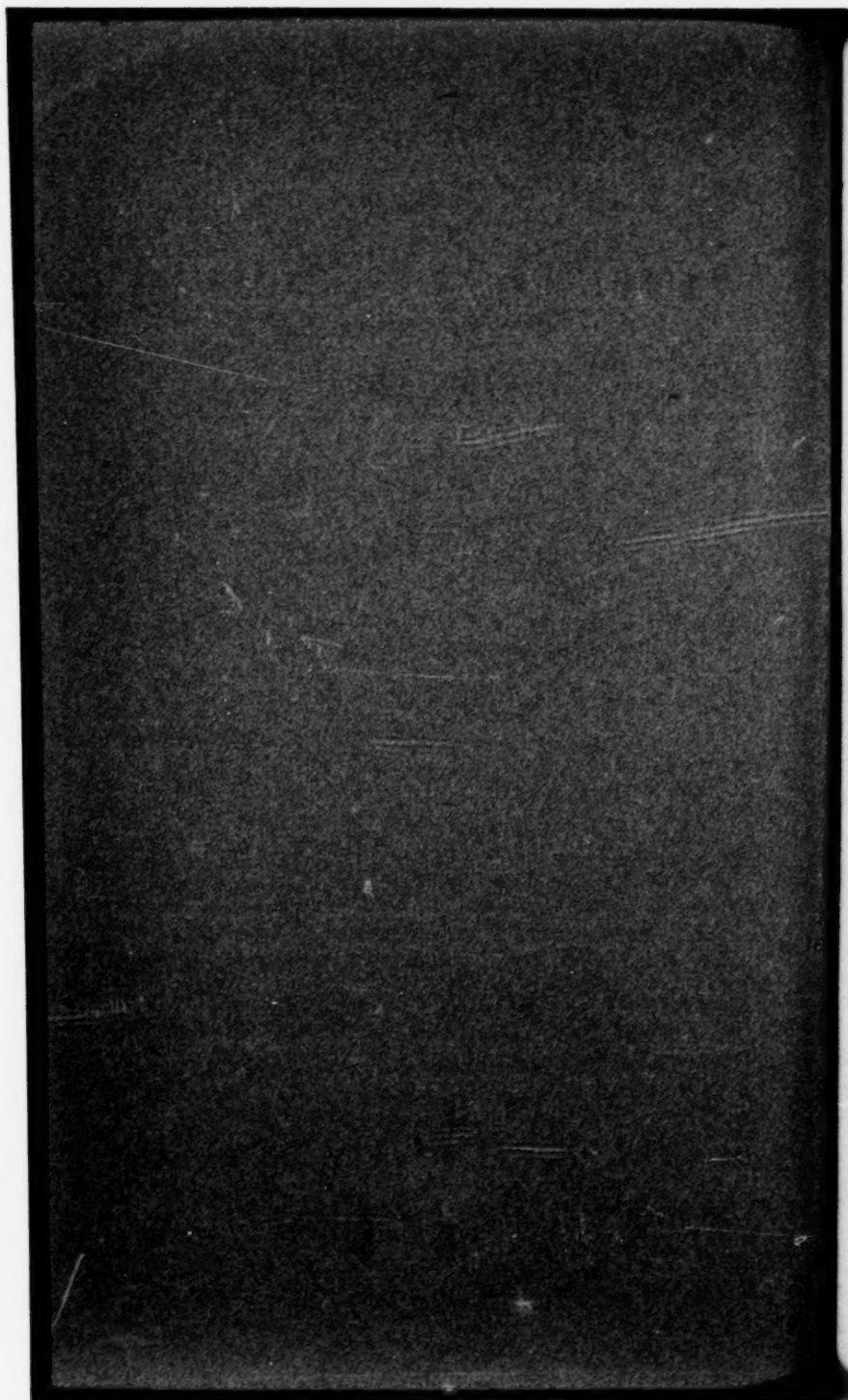
THE UNITED STATES

IN ERROR TO THE SUPREME COURT OF THE UNITED STATES  
THE EASTERN DISTRICT OF NEW YORK

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ARGUED MAY 10, 1912.

(11-100)



(24,204)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 471.

GEORGE BURDICK, PLAINTIFF IN ERROR,

*vs.*

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE SOUTHERN DISTRICT OF NEW YORK.

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Original. Print

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1 UNITED STATES OF AMERICA, *ss*:

The President of the United States of America to the Judges of the District Court of the United States for the Southern District of New York, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, in the matter of an alleged contempt of court by George Burdick, between George Burdick, plaintiff-in-error and United States of America, defendant-in-error, a manifest error hath happened, to the great damage of the said George Burdick, as is said and appears by his complaint,

We, being willing that such error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf,

Do Command You, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Justices of the Supreme Court of the United States, at the Capitol in the City of Washington, D. C., together with this writ, so that you have the same at the said place before the Justices aforesaid, on the 20th day of May, 1914, that the record and proceedings aforesaid being inspected, the said Justices of the Supreme Court may cause further to be done therein, to correct that error, what of right and according to the law and custom of the United States ought to be done.

2 Witness, the Honorable Edward Douglass White, Chief Justice of the United States, this 20th day of April, in the year of our Lord one thousand nine hundred and fourteen, and of the Independence of the United States the one hundred and thirty-eighth.

[L. s.]

ALEX. GILCHRIST, JR.,  
*Clerk of the District — of the United States  
of America for the Southern District of  
New York in the Second Circuit.*

The foregoing writ is hereby allowed.

LEARNED HAND,  
*U. S. District Judge.*

Filed April 21, 1914.

3        The District Court of the United States of America for the  
             Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, Begun and Held in the City of New York, Within and for the District Aforesaid, on the First Tuesday of March, in the Year of Our Lord One Thousand Nine Hundred and Fourteen, and Continued by Adjournment to and Including the 13th Day of April, in the Year of Our Lord One Thousand Nine Hundred and Fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The Jurors of the United States of America, within and for the District aforesaid, on their oath make presentment to this Court stating that on the 7th day of April, in the year of our Lord one thousand nine hundred and fourteen, in the course of an investigation that the Grand Jurors were then making into certain alleged violations of §37 and §39 of the Criminal Code of the United States, George Burdick appeared before the said Grand Jurors in compliance with a subpoena served upon him, directing him to testify and give evidence in regard to an alleged violation of §37 and §39 of the Criminal Code of the United States; that the said George Burdick, after being duly sworn, testified as follows:

4                Before a Quorum of the Grand Jury.

In the Matter of JOHN DOE and RICHARD ROE.

NEW YORK, P. M., April 7, 1914.

GEORGE BURDICK, sworn and examined.

By Mr. CARSTARPHEN:

Q. What is your name?

A. George Burdick.

Q. Where do you reside?

A. 411 Ocean Avenue, Brooklyn.

Q. Were you employed with the New York Tribune on the 31st day of December, 1913, and during the month of December, 1913, and, if so, in what capacity?

A. I was employed by the Tribune as City Editor.

Q. You are aware, are you not, that in a proceeding in the United States District Court for the Southern District of New York, in the matter of George Burdick, which came up on the presentment of the Grand Jury of the United States for the Southern District of New York of George Burdick for contempt for refusing to answer questions regarding the source of his information which was the basis of certain articles in the New York Tribune of December 19th, 1913, and December 31st, 1913, regarding Customs frauds, said presentment having been made on the 18th day of February, 1914, that on

the 27th day of February, 1914, Hon. Learned Hand the District Judge before whom the presentment was made, passed an order, "In the Matter of George Burdick, a witness held in contempt of Court by the Grand Jurors of the United States for the Southern District of New York," wherein he, "ordered that the respondent, George Burdick, is in contempt, and that he pay a fine of \$500, with leave to said respondent to purge himself by appearing on notice before the present or any subsequent Grand Jury and testifying fully as to the sources of his information, which was the basis of said certain articles in the New York Tribune regarding Customs frauds, and in the event of his refusal or failure to so answer, a commitment may issue in addition until he shall comply;" I am asking you if you are aware of all these things?

A. I am.

Q. Do you appear before this Grand Jury this afternoon, pursuant to a subpoena dated the 27th day of March, 1914, addressed to you and directing you to attend before the Grand Inquest of the Body of the People of the United States of America for the Southern District of New York, at a District Court to be held in the United States Court and Post Office Building, in the Borough of Manhattan, City of New York, in and for the Southern District of New York, on the 30th day of March, 1914, at three o'clock in the afternoon, to testify and give evidence in regard to an alleged violation of sections thirty-seven and thirty-nine of the Criminal Code of the United States, on the part of the United States?

A. Yes, sir, I do.

Q. The United States Marshal has made the following return upon the original of this subpoena: "Service of a copy of the within subpoena admitted this 28th day of March, 1914, Henry A. Wise." Was Henry A. Wise authorized by you to accept service of this subpoena and did he deliver a copy of said subpoena to you or communicate the contents of the subpoena to you?

A. He did.

Q. I wish to inform you that I was notified by Mr. Henry A. Wise, who stated that he acted as your counsel, that if I would instruct the United States Marshal to have a Deputy Marshal call at Mr. Wise's office with a copy of the subpoena, and deliver the subpoena to Mr. Wise, that he would communicate with you and that you would appear on March 30th, at three o'clock at the session of the Grand Jury, and that neither you nor he, as your counsel, would raise any technical question as to the notice called for and mentioned in Judge Hand's order. Is that your understanding of the matter, and do you now admit that you have received notice of the entry of Judge Hand's order as aforesaid and notice to appear March 30th before this Grand Jury?

A. Yes.

Q. And do you admit that upon your so appearing before this Grand Jury on March 30th, 1914, you were not at that date examined, but were directed by the Foreman of the Grand Jury to return today, April 7th, 1914, at two o'clock P. M., before this Grand Jury?

A. Yes.

Q. I have ascertained, Mr. Burdick, that through an inadvertance of the Clerk, your name in that subpoena, copy of which I have referred to, was mentioned as "Edward" instead of George Burdick, and while you have stated that you have received notice and that you appear here today and that neither you nor your counsel will raise any technical question as to whether or not you had notice of the entry of Judge Hand's order, I have caused to be issued to you another subpoena in the matter directing that you appear before this Grand Jury forthwith, said subpoena having been served upon you at about fifteen minutes after two o'clock today, as a witness to be examined under sections thirty-seven and thirty-nine of the Criminal Code of the United States, and were you served with a notice of that subpoena before you came into the Grand Jury room this afternoon?

A. I was.

Q. And that mentions your name as George Burdick?

A. Yes.

Q. Mr. Burdick, as you were informed when you appeared before the Grand Jury on the afternoon of February 18th, 1914, the President of the United States has granted you a full and unconditional pardon for all offenses against the United States which you have committed, or may have committed or taken part in, in connection with the securing, writing about or assisting in the publication of the information incorporated in an article which appeared in the issue of the New York Tribune on December 31st, 1913, and in connection with any other article, matter or thing concerning which you might be interrogated before the Federal Grand Jury in the proceeding entitled, "United States vs. John Doe and Richard Roe." You were at that time tendered or offered this warrant of pardon which you took in your hand, and which you read aloud; you thereafter left the Grand Jury room, but did not take with you the warrant of pardon, and, in fact, you declined to do so. I now wish to inform you that this warrant of pardon was placed in the custody

6 Judge holding Court at the time when the presentment was made to the Grand Jury on February 19th, 1914, and was thereafter turned over to the Clerk of the United States District Court for the Southern District of New York, by whom it has since been held, and from a file in his office, I today produce this warrant of pardon. I furthermore desire to inform you that this warrant of pardon has not been revoked and is still outstanding; but you will please take the warrant of pardon which I now hand you, examine it, satisfy yourself that it is the same warrant of pardon that was handed to you when you appeared before the Grand Jury on February 18th, 1914, and I wish to inform you, as a representative of the Department of Justice, through whom this warrant of pardon was transmitted to H. Snowden Marshal, United States Attorney for this district, and whose assistant I am, that you are hereby freely and unreservedly tendered this warrant of pardon which is a free and unconditional pardon. (Warrant of pardon handed to witness.)

A. I made no marks on that; while I assume it is exactly the same document I read, there is no positive way in which I could identify it.

Q. I show you the first page reciting your name and I show you

the seal on the last page and the signature of Woodrow Wilson, President of the United States, and the signature of J. C. McReynolds, Attorney General of the United States; you have no doubt it is the same pardon I handed you the last date you were here?

A. Absolutely no doubt at all; it has the same appearance as the one I read.

Q. Do you wish to accept this warrant of pardon?

A. I do not.

Q. It is freely and unreservedly tendered to you; do you want to take it?

A. I do not.

Warrant of Pardon marked Exhibit "Z."

Q. Now, Mr. Burdick, inasmuch as you have declined to take the warrant in your physical possession, you will observe that I have laid it here on the table before you, within reach of your hand, and that you are absolutely at liberty to take it before I ask you any questions this afternoon, or while I am asking you any questions, or after I have asked you any questions, and should you not take the warrant of pardon with you when you leave the Grand Jury room this afternoon, I will return it to the Clerk of the United States District Court for the Southern District of New York, in whose custody it will remain, subject to your calling for it or taking it at any time in the future that you may want it.

A. I understand that.

Q. Have you read Judge Learned Hand's opinion that was passed in connection with this case after the contempt proceedings?

A. I have.

Q. Do you remember, in a general way, the questions which were asked of you the last time you appeared before the Grand Jury, and which you refused to answer on the ground that they might tend to incriminate you?

A. I do.

Q. Judge Hand has said in the concluding clause of the order that he entered that you were in contempt for refusing to answer those questions and should pay a fine, and he granted you leave to purge yourself by appearing on notice and testifying fully as to the source of your information which was the basis of certain articles appearing in the New York Tribune regarding Customs frauds and, in the event that you failed to answer, a commitment would issue. Now, do you wish to purge yourself of contempt and to answer these questions?

A. I do not.

Q. I am going to read to you from the record the last time you appeared before this Grand Jury, many of the questions that were asked you before in practically the same language that they were then asked in, and I am going to ask you to answer each question as I read it to you. I show you a copy of the New York Tribune dated December 19th, 1913, and I direct your attention to an article in that paper in the last column on the first page with headlines, the first of which is, "Plan Fight for Millions Saved by Duty Dodging,"

and to the article itself, which article commences with the words, "Robert C. Heitemeyer of Hoboken," and continues down the entire column and concludes in the first column on page two with the words, "in favor of Mrs. Leeds," and I ask you to look at the paper and read the article. Have you read the article?

A. I have.

MR. CARSTARPHEN: This is the copy of the New York Tribune which was marked at the February 18th, 1914, hearing, "Exhibit No. 1," and I will now have it marked at this hearing today.

Newspaper referred to marked "X." April 7-14-R. F. S."

Q. Did you assign, designate, instruct or direct William L. Curtin, a reporter on the New York Tribune, or any other person to write the article to which I have called your attention, or any article along the lines mentioned in this article?

A. I decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. This warrant of pardon, Mr. Burdick, which you examined, and which is now on this table before you, and which is the same warrant of pardon that you were shown previously means and is intended to absolve you from any offenses you have committed or may have committed, or taken part in, in connection with the securing or writing about or assisting in the publication of the information incorporated in the article referred to, and in connection with any other article, matter or thing, concerning which you may be interrogated before the United States Grand Jury, under the sections referred to in the subpoena directed to you, and concerning which you are now asked to testify. You have just stated that to answer the question I have just asked you that you have not answered, would tend to incriminate you and that you decline to answer it for that reason; now, upon the strength of your so testifying at a previous hearing before another Grand Jury, this warrant of pardon was obtained for you; it bears the signature of the President of the United States, Woodrow Wilson, and the signature of J. C. McReynolds, the

Attorney General of the United States, and as I then notified

8 you, I tell you now that it came to the United States Attorney, to New York City, and, through him, to me, to be offered to you as a document coming through the proper and general course from those officials; that this warrant of pardon grants you a full, complete and unconditional pardon for all offenses or any crime you could possibly have committed in connection with the article, or from whatever source you may have obtained it. It is just as complete as it was possible for it to be made, and I say to you now that if you did believe when you refused to answer the questions the other time, and if you believe now that to answer those questions, as to the source from which you got that information, would incriminate you, that this pardon absolves you. If you did believe it before—that it would tend to incriminate you—and if you believe it now, I inform

you that you have been offered a pardon that absolves you from any offenses, pardons you from any offenses which you may have committed against the United States on account of anything that you did in connection with the publication of that article, and I am now asking you, in view of the fact that that pardon has been presented to you, read by you and explained to you, if you will answer the questions I shall now ask with regard to this article appearing in the New York Tribune on December 19th, 1913, and the article appearing in the New York Tribune on December 31st, 19913.

A. No, even though I have seen this warrant of pardon signed by the President and have had it explained to me.

Q. You still decline to answer?

A. I still decline to answer.

Q. On what ground.

A. On the ground that I still fear that to answer might tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Did you furnish William L. Curtin, or any other person with the information incorporated in the article of December 19th, 1913, or make any suggestion to him with reference to the matter set forth in that article?

A. I decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question would tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

9 Q. Did you have or receive from any person or persons, or any source or sources, any of the information contained in the article in question prior to the publication thereof?

A. I decline to answer.

Q. On what ground?

A. I fear it may tend to incriminate me.

Q. Do you honestly and truly believe the answer to that question might tend to incriminate you?

A. I do.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence, and has not been revoked?



A. I do.

Q. Did you have or receive from any person or persons, or from any source or sources, any of the information contained in the article in question prior to the publication thereof?

A. I decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Do you know from what person or persons, or source or sources, the information contained in this article was obtained?

A. I decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to the warrant of pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. I show you a copy of the New York Tribune dated December 31st, 1913, and direct your attention to an article bearing the headline, "Glove Maker's Gems May be Customs Size," the article itself commencing with the words, "A Diamond Necklace," and continuing down to the end of the column on page one to the word "Mystery of the In-" and continued on the second page in the fourth column beginning with the word, "quiry regarding," and ending with the words, "duty paid," and I ask you to look at the paper and read the article. Have you read the article?

A. I have.

10 Mr. CARSTARPHEN: This is the exhibit that in the previous hearing was referred to as No. Two, and which will be offered in this hearing as exhibit No. "Y."

Q. Did you, on the 30th day of December, 1913, or prior to that, assign or instruct or designate or direct Mr. Henry D. Kingsbury, a reporter upon the New York Tribune, to write an article with reference to an alleged importation into the United States by Lucius Nathan Littauer of a diamond necklace without the payment of duty thereon?

A. I decline to answer.

Q. On what ground?

A. On the ground I fear it may tend to incriminate me.



Q. Do you honestly and really and truly believe that your answer to that question may tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you with regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Did you state to Henry D. Kingsbury at the time you were designating him to write an article with reference to the subject that you had the facts or a report in reference to the matter in the office of the New York Tribune at the time and that you wanted him to go down to interview the Collector of the Port, Dudley Field Malone?

A. I decline to answer.

Q. On what ground?

A. On the ground I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you with regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. From what person or persons, or source or sources, and in what manner, did you obtain and receive the information with reference to an alleged importation by Lucius N. Littauer into the United States of a diamond necklace without the payment of duty thereon?

A. I decline to answer.

Q. On what ground?

A. On the ground I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to this pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Mr. Harry David Kingsbury has testified that he wrote such part of the article in the December 31st, 1913 issue of the Tribune to which I have called your attention as related to Lucius N. Littauer and his alleged importation into the United States of a diamond necklace without the payment of duty, and referring to an interview had with the Collector of the Port, Dudley Field Malone; and he further testified in response to a question, "From whom did you get any of the information that you incorporated in the article of which this is a printed copy"—"I got it all from my superiors in the office," and in response to a question, "From whom did you

get it?" Mr. Kingsbury answered, "From Mr. Burdick." Mr. Kingsbury further testified in answer to the question, "Did Mr. Burdick tell you everything that you have written in that article,"—"Everything except my interview with Mr. Malone." Mr. Kingsbury further testified that Mr. Burdick had told him in substance, what had been written in the article, and "That the information had come to the office to that effect," and that he, Mr. Kingsbury, thereafter told Mr. Malone the substance of what appeared in the article, and furthermore told Mr. Malone that the information was in the Tribune office; and Mr. Kingsbury further testified that he had so understood, that the information was in the Tribune office, because Mr. Burdick told him so. Did you tell Mr. Kingsbury what he has testified to in reference to this matter, and, after giving him the information he states you furnished him, did you tell him to go to the Customs House to talk to Collector Malone in regard to the matter?

A. I decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that to answer that question might tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. From what source or sources, person or persons, and in what manner was the information that you stated to Mr. Kingsbury had come to the office of the Tribune obtained or secured, and by whom?

A. I decline to answer.

Q. On what ground?

A. That it might tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence, and has not been revoked?

A. I do.

12 Q. Did you, or to your knowledge, did any reporter or any person employed in any capacity whatever by the New York Tribune, receive any of the information incorporated in the articles in the issues of the Tribune of December 19th and December 31st, 1913, headed respectively, "Plan Fight for Millions Saved by Duty Dodging," and "Glove Maker's Gems may be Customs Size," from any official or employe at and in the office of the Collector of Customs at the Port of New York, the Surveyor of Customs at the Port of New York, the Special Agents of the Treasury Department

at the Port of New York, the Appraiser's Stores at the Port of New York, or from any person or employe or official of the Treasury Department at the Port of New York, or any employe or official of the United States Government whatsoever, or from any person whatsoever under the supervision and control of the United States Government?

A. I decline to answer.

Q. On what ground?

A. On the ground I fear it might tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to this question might tend to incriminate you?

A. I do.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Did you, or to your knowledge, did any reporter or employe of the New York Tribune receive any of the information incorporated in the articles in the issues of December 19th and December 31st, 1913, of the New York Tribune, headed respectively, "Plan Fight for Millions Saved by Duty Dodging," and "Glove Maker's Gems may be Customs Size," from any person or persons not in the employe of the United States Government, but who obtained such information from any person or persons in the employe of the United States Government in any capacity whatsoever, and particularly from any official or employe at and in the office of the Collector of Customs at the Port of New York, the Surveyor of Customs at the Port of New York, the Special Agents of the Treasury Department at the Port of New York, the Appraiser's Stores at the Port of New York, or from any person, employe or official of the Treasury Department at the Port of New York?

A. I decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to such question would tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

13 Q. Mr. Burdick, why don't you, if you are sincere in your statement and honestly believe that the answers to these questions will tend to incriminate you, accept this pardon from the President of the United States, which, in its language and terms, absolves you from any and all offenses that you may have committed against the United States in connection with the publication of those articles?

A. I am not a lawyer, and so perhaps am not competent to give

my reasons very carefully, but I still have doubt of the nature and power of such a warrant of pardon as this.

Q. Well, do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence, and has not been revoked and notwithstanding the opinion of Hon. Learned Hand, the Judge before whom this matter was argued and heard as to this pardon?

A. With all respect to the Honorable Judge Hand and to you, as the representative of the District Attorney and the Department of Justice, I do.

Q. Is it that you don't want to be absolved from anything you fear might tend to incriminate you?

A. That is a question I think I decline to answer.

Q. On what ground?

A. That that would go to the very nature of what I am avoiding by my declination and so would tend—might tend to incriminate me.

Q. Now, do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to this pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Suppose, Mr. Burdick, that you were actually on trial for having committed any offenses that would arise under sections thirty-seven and thirty-nine of the Criminal Code of the United States, and you were offered this warrant of pardon and you thought that it would absolve you from the consequences of the acts with which you are charged, you would take the pardon then, wouldn't you?

A. I can't tell you what I would do in a hypothetical case under oath; I wouldn't answer a question like that.

Q. You have said you don't answer any of the questions for fear that your answer might tend to incriminate you; now, you are offered a pardon to remove that fear, and I have asked you in order to see just whether or not you really and honestly and truly have that fear that it might tend to incriminate you, and whether or not,

14 if you were actually on trial charged with a commission of any offenses under sections thirty-seven and thirty-nine of the Criminal Code of the United States you would refuse that pardon if it was offered to you?

A. In the actual case where the pardon was offered to me, I declined to accept it, and as to what I believe about the nature and power of the pardon I have answered, but as to the pardon in a hypothetical case no one is really competent to answer as there may be inferences surrounding it, and I decline to answer.

Q. Do you doubt the validity of this warrant of pardon, in so far as the fact that it is issued by the President of the United States and the Attorney General is concerned—I mean, as a document, as a warrant of pardon.

A. I have no reason to doubt that this so-called warrant of pardon

is in proper legal form, although, not being an attorney, I am not competent to judge.

Q. So then, your refusal to take it or to answer is not based upon any technical grounds that it is not signed by the President of the United States, or that it is not signed by the Attorney General of the United States, or that it has not the seal of the United States on it.

A. Absolutely not.

Q. Well, it is a fact, isn't it, that the reason that you don't want to take the warrant of pardon is because you want to continue to refuse to answer these questions and to continue to refuse to disclose the source of your information in regard to those articles?

A. That is a question I refuse to answer.

Q. On what ground?

A. That to go into the nature of my refusal to answer or to accept this pardon would be to go into the nature of what, how and the why of the thing, and so I would be incriminated.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. Isn't it a fact, Mr. Burdick, that the real reason you don't want to accept that warrant of pardon is not because you fear that to answer these questions would tend to incriminate you, but because, as a newspaper man, you have the ethics of the newspaper business, which you desire to respect, and that you would rather go to jail for contempt and be able to say that you refused to tell the source from which you got any information, than you would to accept the pardon and know that you could not possibly be proceeded against for all time, and yet answer the questions?

A. That is another question, that, with all respect to you Mr. Carstarphen, and this Grand Jury, I must decline to answer.

Q. On what ground?

A. On the ground that to go into my refusal to answer the questions, to go into the nature of my mental reasons for doubt, and non-acceptance of this pardon would be to—Would tend to incriminate me.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have  
15 learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. I have offered you the warrant of pardon, and have laid it on the table before you; now, what are you going to do about taking the pardon with you this afternoon, Mr. Burdick?

A. I am not going to do anything.

Q. I desire, then, to notify you that I am going to return this warrant of pardon to the office of the Clerk of the District Court of the United States for the Southern District of New York, and ask him to again place it in the files of the Court with respect to

the contempt proceeding against you, and that it will continue to repose there and that at any time—today, tomorrow or forever, that you may wish to come and get it and avail yourself of it, that it is there, and that if any proceeding is instituted against you by the United States Attorney on account of any of these matters in connection with the publication of these articles that you can go and get that pardon and it completely absolves you from any offenses, free and unconditionally, and I want you to know that, it will absolve you from any offenses free and unconditionally in connection with those articles of December 31st and December 19th appearing in the New York Tribune; do you so understand?

A. I do.

Q. Now, in the face of all that I have told you, do you still want the Grand Jury—you, an intelligent man, working, as you have, for years, on a New York newspaper—to understand that you have refused to answer the questions which have been propounded to you, because you fear that to answer them may tend to incriminate you?

A. I do.

Q. Now, Mr. Burdick, you may recall that when this matter was up for argument before one of the judges before whom we had one of the presentments for contempt, that that Judge stated in the course of his opinion that the laws of the United States were founded largely upon the action of Grand Juries; you've been requested by the Grand Jury to answer certain questions, and I, as their mouthpiece in this matter—and you all agree, don't you, gentlemen, that I should ask him all these questions—

The FOREMAN: Yes, sir.

(Mr. CARSTARPHEN, Continuing:)

Q. That you have been requested to answer certain questions, and you have declined to answer, even though you know that the members of the Grand Jury here sitting, and the Foreman of this Grand Jury request you so to do?

A. With all respect to the Grand Jury, and its Foreman, and to you, as the representative of the United States Attorney of this District, I do.

Q. And you so refuse, Mr. Burdick, knowing that one of the most important functions of the Government as it is constituted in relation to its judicial functions, is that performed by Grand Juries in investigating to ascertain whether or not crimes have been committed?

A. With all respect, I do.

16 Q. And that you are called here as a witness simply to ascertain whether or not a crime has been committed, and asked as a witness to testify?

A. I do.

Q. In that connection, so that there may be no misunderstanding, I will say to you now, as I told you before that you are called as a witness and it was only when you yourself said if you answered the questions it would tend to incriminate you, that a pardon was

obtained for you so that you would no longer have that fear that you raised the question as to whether you had or had not committed a crime, or whether the answer would tend to incriminate you. Now, I want to say to you that it is your own statement that you fear it will tend to incriminate you, and if your own belief is honest and true, and if you do believe it will tend to incriminate you, why, then, we have to say to you that there is here a pardon that will relieve you from any of the consequences.

A. I didn't get any question in connection with that.

Q. I am just making that statement; do you understand that is the situation?

A. I have testified that to answer the questions might tend to incriminate me and I understand this paper before me is a warrant of pardon which you have explained would free me from the consequences.

Q. And you further understand that you are called as a witness in proceedings before this Grand Jury, as a witness to alleged violations of sections thirty-seven and thirty-nine.

A. I understand I was called as a witness, and that the question of any criminality on my part was raised by my plea that it might tend to incriminate me.

Q. And it was after you yourself had raised that question, that a pardon was secured and offered you.

A. I understand.

Q. Now, most of the questions that I have asked you are questions that have been heretofore asked you on previous proceedings and you have declined to answer them on the ground that your answers might tend to incriminate you. However, in concluding the examination today, I now wish to call your attention to some matters that I did not interrogate you about at the previous hearings before the Grand Jury, and these one or two considerations I am going to urge on you and ask you to give them careful thought and see if in view of them, you do not think it better to reconsider your determination not to answer these questions; I am going to tell you that one of the considerations is this: You realize when confidential information regarding prosecutions is published in the newspapers, it is a great handicap to the prosecuting officials.

A. I realize that such publications done indiscreetly may well be a great handicap.

Q. Where do you draw the line as to whether it was discreetly or not? How would you work that out?

A. Well, it seems to me that publishing the text of an indictment before that indictment has been filed, would be indiscreet.

Q. Wouldn't you say it was indiscreet to publish what was occurring in the Grand Jury room or published information that the confidential agents of the Government had gotten while a matter was still pending before a Grand Jury, and before any indictment had been found?

A. If the nature of the case was such that that publication might aid the guilty to escape I would; if the nature of the case was such that that publication might rather lead the guilty to be punished, I would not.



Q. You are aware, I suppose, that any such disclosure of confidential information lays open to suspicion the Grand Jury, the employes of the District Attorney's Office, and the employes of the Custom's House?

A. Well, I should suppose it must.

Q. You realize, do you not, that until the persons who betrayed the Government's secret that were written about in those two articles in the Tribune of December 19th and December 31st, 1913, to which I have specifically directed your attention are discovered, a large number of probably innocent men will rest under the suspicion of having violated their duties?

A. That question so expressed is one I must decline to answer.

Q. On what ground?

A. On the ground that it may tend to incriminate me.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned in regard to this warrant of pardon and notwithstanding the fact that it is still in existence, and has not been revoked?

A. I do.

Q. You are aware, I suppose, are you not, that a person indicted for smuggling and who leaves the country before he or she is arrested cannot be extradited?

A. I have so understood.

Q. And you are aware, I suppose, that there are perhaps a couple of dozen indictments pending against defendants who have fled the jurisdiction of the United States, and where they cannot be extradited?

A. That is not something that I am aware of. Can I amplify that answer? I have reason and had every reason to believe in this particular case that the defendants were aware of the Grand Jury proceedings before they were published.

Q. Well, now, in that connection, did you know that a witness had appeared before the Federal Grand Jury two or three days before Christmas Day, 1913, which would be eight or nine days before the publication of that article about the Littauers, and that an investigation was under way by the Grand Jury, and that it had not been concluded at the time the article was published in the Tribune of December 31st?

A. That is a question I must, with all due respect, decline to answer.

Q. On what ground?

A. On what ground I fear it may tend to incriminate me.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to this pardon and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. And in that connection, did you know, at the time the article was published in the December 19th issue of the Tribune in regard to the Heitemeyer-Alexander matter, that the Grand Jury had practically concluded its investigations of



that smuggling transaction, but that the indictment had not yet been filed?

A. That is a question I must decline to answer.

Q. On what ground?

A. On the ground that it might tend to indieriminate me.

Q. In refusing to answer the previous questions, do you so decline notwithstanding all that has been told you in regard to this warrant of pardon, and all that you have learned regarding the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. You said a little while ago something to the effect that you would regard it very indiscreet to publish anything if you thought it would interfere with an arrest being made?

A. That is, you asked me, for some reason unknown to me, to advance instances as what I regarded discreet and indiscreet and I mentioned that as an instance of indiscretion.

Q. Now, assuming that the Grand Jury had under investigation an alleged smuggling transaction wherein a man named Littauer was a party, and the Grand Jury had heard the testimony of the most important and principal witness and that Government Agents were vigorously engaged in the efforts to secure corroboration of that testimony, without which corroboration, perhaps, an indictment could not have been found, would you not say that it was indiscreet and that it made it possible for the person named to flee the jurisdiction, to publish on the 31st day of December, 1913, that all these things were being done?

A. That assumed case as you have just stated it doesn't seem to me to meet the example of an indiscretion that I gave you, and it is simply a new hypothetical case placed before me.

Q. No, I am now stating to you facts, that such a condition did prevail and that such was the existing condition at the time of the publication of this article.

A. Taking it as a fact your question is do I know what?

Q. My question is whether or not in view of these conditions, do you regard it as discreet or indiscreet to have published it in the Tribune, the only paper in New York City that published it, what was going on with reference to that transaction.

A. That is a question that, with all due respect, I must decline to answer.

Q. On what ground?

A. On the ground that it might tend to incriminate me.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. You would say, would you not, that such a premature publication would be indiscreet, if not, in fact, a violation of the law.

19 if it would tend to make it possible for the person who was being proceeded against by the Grand Jury to thus be informed, and thereby be able to flee the jurisdiction of the Court?

A. In the example I gave at your request, I said that the publication if it resulted in the escape of the guilty party might be indiscreet.

Q. Then, the mere fact that in the instances of the Littauer case and of the Heitemeyer case the parties concerned stayed in the jurisdiction and thereafter pleaded guilty, you consider released you and the New York Tribune of any indiscretion by having by a premature publication having given them an opportunity to escape before the indictments were returned?

A. I must decline to answer a question of that kind based on this specific case.

Q. On what ground?

A. On the ground that it might tend to incriminate me.

Q. And do you so state notwithstanding the fact that you have seen this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

Q. I recall, Mr. Burdick, that upon previous occasions you have testified that the information that was embodied in the articles in the December 19th and December 31st issues of the Tribune to which I have directed your attention—that that information did not come from the office of the United States Attorney or the Department of Justice?

A. Not to the best of my knowledge.

Q. Don't you think, Mr. Burdick, that in view of the different proceedings that you have been through in connection with this matter, two presentments for contempt and the number of times you have had to appear before the Grand Jury, and the fact that there is a Presidential pardon in this instance you can avail yourself of at any time to release you from any fear you may have that to answer these questions will tend to incriminate you, that you have gone just about as far as the ethics of the newspaper business call upon you to go to protect the informant of these articles?

A. That is a question, which, in that form, I must decline to answer.

Q. On what ground?

A. On the ground that it may tend to incriminate me.

Q. Do you so state notwithstanding all that has been told you in regard to this warrant of pardon and all that you have learned in regard to the pardon, and notwithstanding the fact that it is still in existence and has not been revoked?

A. I do.

MR. CARSTARPHEN: Mr. Foreman, I ask that you will direct Mr. Burdick to appear again before this Grand Jury at its session to be held April 16, 1914, at three forty-five o'clock, P. M., without further notice or subpoena.

The FOREMAN: You will be here on April 16th, at 3:45 o'clock without further notice or subpoena, Mr. Burdick.

Thereupon Mr. Burdick retired from the Grand Jury room.

Mr. CARSTARPHEN: I will retire from the room and I ask that in this matter of George Burdick and his refusal to answer the  
20 questions propounded to him this afternoon, that he be presented for contempt and that this Grand Jury will vote a presentment and instruct me to prepare the necessary papers.

Mr. Carstarphen retired from the room and upon being sent for by the Foreman of the Grand Jury re-entered the room and the Foreman reported that the Grand Jury had voted a presentment against George Burdick for contempt and directed Mr. Carstarphen to prepare the necessary papers.

21 Following is a copy of Warrant of Pardon hereinbefore referred to, and marked Exhibit "Z":—

"Woodrow Wilson, President of the United States of America, to all to whom these presents shall come, Greeting:

Whereas George Burdick, an editor of the New York Tribune, has declined to testify before a Federal Grand Jury now in session in the Southern District of New York, in a proceeding entitled 'United States v. John Doe and Richard Roe,' as to the sources of the information which he had in the New York Tribune office, or in his possession, or under his control at the time he sent Henry D. Kingsbury, a reporter on the said New York Tribune, to write an article which appeared in the said New York Tribune in its issue of December thirty-first, 1913, headed 'Glove Makers' Gems may be Customs Size,' on the ground that it would tend to incriminate him to answer the questions; and,

Whereas, the United States Attorney for the Southern District of New York desires to use the said George Burdick as a witness before the said Grand Jury in the said proceeding for the purpose of determining whether any employee of the Treasury Department at the Custom House, New York City, has been betraying information that came to such person in an official capacity; and,

Whereas, it is believed that the said George Burdick will again refuse to testify in the said proceeding on the ground that his testimony might tend to incriminate himself;

Now, Therefore, be it Known, that I, Woodrow Wilson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant unto the said George Burdick a full and unconditional pardon for all offenses against the United States which he, the said George Burdick, has committed or may have committed, or taken part in, in connection with the securing, writing about, or assisting in the publication of the information so incorporated in the aforementioned article, and in connection with any other article, matter or thing, concerning which he may be interrogated in the said grand jury proceeding, thereby absolving him from the consequences of every such criminal act.

In Testimony Whereof I have hereunto signed by name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington this fourteenth day of February, in the year of our Lord One Thousand Nine Hundred and Fourteen and of the Independence of the United States the One Hundred and Thirty-eighth.

[SEAL]

(Signed)

WOODROW WILSON.

By the President:

(Signed) J. C. McREYNOLDS,  
*Attorney General."*

22 The FOREMAN: I shall.

The said Grand Jurors thereupon voted a presentment against George Burdick, for contempt, and requested the United States Attorney to prepare the necessary papers.

H. SNOWDEN MARSHALL,

*United States Attorney for the  
Southern District of New York.*

ALEX. T. KELLNER,

*Foreman of the Grand Jury.*

Filed April 16, 1914.

23 Marked for Iden. No. 2. Feb. 18/14. R. F. S. No. Y.  
Apr. 7/14. R. F. S.

New-York Tribune. Vol. LXXIII. No. 24,517. To-day, fair. To-morrow, cloudy; light west winds. New-York, Wednesday, December 31, 1913. Price one cent in City of New York, Newark, Jersey City and Hoboken. Elsewhere Two Cents.

Glove Maker's Gems may be Customs Size. Ex-Congressman Littauer's \$40,000 Necklace Tried On by Uncle Sam. Scintillation; Investigation. Did Man of Gauntlet Note Fit Law When He Brought in Diamonds? Mrs. Corey Queried. Wife of Steel Magnate is Asked about Rings that Interested the Port Inspectors.

A diamond necklace, said to be the property of Lucius Nathan Littauer, glove manufacturer and former Representative, and the jewels of Mrs. William Ellis Corey have interested custom officials sufficiently to cause investigations to be ordered in each case. So important is the matter of the necklace, which is valued at \$40,000, that Dudley Field Malone, Collector of the Port, is making a personal investigation of the circumstances under which it was brought into this country.

The preliminary inquiry appears to have developed the fact that the diamonds were admitted without duty. Mr. Littauer is said to have taken the necklace to Washington after his return from abroad. It is understood that an inspector was sent to Washington to make inquiry concerning the jewels, but that Mr. Littauer, hearing that

the case had aroused comment, instead of waiting for the summons, came to New York at once and turned the necklace over to the authorities.

Collector Malone refused yesterday to discuss the case concerning Mr. Littauer. "I cannot discuss this or any case," he said, "which is under investigation. If the facts obtained by an inquiry into any case warrant further action, it will be taken in due course and the circumstances made known at that time."

### Littauer Long in Public Life.

The name of Littauer has been one to conjure with in the glove trade for many years. Littauer Brothers, of Gloversville and this city, control a large share of the output of gloves in this country. Lucius N. Littauer, too, has been a prominent political figure in the state, a Representative in Congress from the old 22d Congressional District and later from the newer 25th, for ten years, from 1897 to 1907. He was a political adviser of Governors Roosevelt and Odell.

The attention of the country was directed to Congressman Littauer in June, 1903, when he became involved in the so-called "glove scandal," relating to a certain contract which his firm had with the government to supply "muskrat gauntlets" to the army. His connection with the government contract came to light at a New York hearing in the bankruptcy proceedings of Edmund R. Lyon, among whose chief creditors was the firm of Littauer Brothers.

Mrs. Corey has always commanded a fair share of attention from Custom House inspectors ever since she married the former president of the United States Steel Corporation and began to make frequent trips to and from Europe. She has carried with her each time a good deal of jewelry, but no serious question had arisen as to whether or not it was dutiable until Mrs. Corey arrived here December 21 from Cherbourg on the Hamburg-American liner Amerika. She was summoned before the Surveyor of Customs shortly after her arrival, and paid a second visit yesterday. Her husband accompanied her each time.

Bit by bit all her jewels were accounted for and passed by until the case of the Custom House had been narrowed down into an inquiry regarding two rings.

### Counts in Francs, Not Dollars.

Unlike the Littauer case, neither the customs officials nor the parties concerned made any mystery of the inquiry regarding Mrs. Corey's rings. During the hearing yesterday Mrs. Corey admitted that she could not remember just when she had purchased the rings. She lapsed into French frequently, and in most cases whenever dollars and cents were mentioned she asked that the amounts be changed into francs, as she was able to count better in that medium.

It was brought out at the hearing that Mrs. Corey had never claimed the privileges of a foreign resident. William Ellis Corey, her husband, maintains a home in this country and considers this

city as his home. Under these circumstances his wife could not claim foreign residence.

The customs officials were greatly pleased with the attitude assumed by Mr. Corey.

On leaving the Custom House Mr. Corey said:

"I shall make an effort to obtain the desired information at once, and if I find the rings have been brought in without the proper payment of duty, I shall pay it at once. I have no fault to find with the officials. They are right in their efforts to get facts. I believe, however, that the rings involved are worth no more than \$6,000."

Mrs. Corey was permitted on arrival to take oath that all her jewels were purchased in this country and that any purchased abroad had been brought in with duty paid.

24 GRAND JURY EX. X, APR. 7/14. R. F. S. Marked for Eden.  
No. One, Feb. 18/14. R. F. S.

New-York Tribune. Vol. LXXIII. No. 24,505. Fair and colder to-day. To-morrow, fair. Rising temperature. New-York, Friday, December 19, 1913. Price One Cent in the City of New York, Newark, Jersey City and Hoboken. Elsewhere Two Cents.

Plan Fight for Millions Saved by Duty Dodging. U. S. Officials May Test Gem Importation for Mrs. Alexander. Only Ten Per Cent Paid on Lavalliere. Ornament was Dismantled, Otherwise Tax Would Be 60 Per Cent. Plan Said to be Legal. If Procedure is Proved Irregular, Effort Will be Made to Collect in Old Cases.

Robert T. Heitmeyer, of Hoboken, the wealthy leather manufacturer, and Mrs. E. M. Alexander, who accompanied him to this country on the French liner France, arriving on November 22, have been charged before the federal grand jury with conspiracy in attempting to smuggle into this country a diamond and sapphire pendant valued at \$500. The jewel has been seized and a strong effort will be made, it is said, to procure an indictment.

Mrs. Alexander, who was named by Mrs. Heitmeyer as correspondent in her action for divorce, has made revelations to the United States Attorney and the customs officials which involve previous purchases of jewelry abroad. It was brought out at the hearing that Tiffany & Co. had acted as an agent in the importation of a lavalliere which the government believes should have yielded a duty of 60 per cent instead of 10 per cent paid by the jewelry firm.

#### Much Involved in Case.

The case, while similar to that of the Leeds pearl necklace, is entirely different technically, and the government, it is said, will make a test case of the lavalliere imported for Heitmeyer by Tiffany & Co. in an effort to prevent the unsetting of gems abroad and the shipping of them to this country to evade the payment of duty.

If the courts decide that such procedure is unlawful it is estimated

that millions of dollars will have to be returned to the government by jewelers who have availed themselves of this technicality of the law to bring in jewels under the 10 per cent class.

When Mrs. Alexander arrived here on the France on November 22 she walked ashore with the \$500 pendant hanging at her neck. Her coat was unbuttoned at the throat, and several women travellers who talked with her on the pier admired the costly jewel.

"I must not let any one see this," she remarked to one of the women, and promptly buttoned her coat collar. Deputy Surveyor Bradley, in plain clothes, passed by at the time, heard her remark and saw her button her coat.

Shortly afterward, when he had donned his uniform, Bradley spoke to Mrs. Alexander and asked her many questions about the gem, which was not then in view. It was not included on her declaration, and she admitted that she had acquired it abroad. Further questioning brought the information that Heitmeyer had bought it for her at Tiffany's in Paris, and had advised her not to declare it.

The gem was seized and taken to the Custom House, and on November 24 Heitmeyer and Mrs. Alexander were examined separately before the Surveyor. Admissions were made which proved to the satisfaction of the Surveyor and Solicitor Andrews that an effort had been made to smuggle. The couple were charged with conspiracy on the high seas to evade the payment of duty, not declaring the gem and trying to get it into the port without payment of duty.

#### Had Bought Other Gems.

After the case had been thrashed out by the customs officials Heitmeyer and Mrs. Alexander were taken before a United States Attorney, to whom the case was turned over.

Heitmeyer was asked if he had ever given Mrs. Alexander any other jewels while the couple were abroad and he said he had. He specified a lavalhere, the foreign value of which was \$1,800. This also was purchased a year ago at the Paris house of Tiffany & Co. He said he was willing to show the bill of sale if he could find it and suggested that perhaps Tiffany & Co. had a record of the transaction.

Asked if duty had been paid upon it, he said he did not know, but assumed it had, as the lavalhere had been imported for him by Tiffany & Co. and delivered to him here.

Heitmeyer said he had the purchase charged to his account with the jewelry house in this city. He said he wanted the clasp changed, and this he understood was done in Paris.

Customs officials went to Tiffany & Co. and the entry was placed at their disposal. This showed that the lavalhere consisted of two brilliants and twenty-one smaller diamonds. The piece had been dismantled abroad and the gems sent over unset with other stones. The duty of 10 per cent was paid, after which the entire piece was reassembled and set. Had the piece come over intact the duty would have been \$1,080 instead of \$180.

When this became known the United States Attorney and the Solicitor gave much consideration to this form of importation, and



were inclined to the belief that while it might be legal and common practice an effort should be made to prevent importations in this fashion. Several men familiar with the customs law are of the opinion that such method of importation is consistent with the law and should be allowed by the government. On the other hand, several legal representatives of the government are anxious that a test be made of this case.

If it is decided that such procedure is not regular it is said that an effort will be made to collect the additional 50 per cent in all cases where jewelry has been dismantled and brought in under the 10 per cent class. Under the new tariff a tax of 20 per cent is put upon all unset jewels.

Mrs. William B. Leeds, widow of the "tinplate king," bought a pearl necklace, valued at \$220,000, in Paris in 1903. She guaranteed to make payment on the delivery of the jewels to her in Newport. Hugh Citroen, a Paris jeweller, brought them unstrung to this country, declaring them on arrival and offering to pay a duty of 10 per cent. This was accepted. Later the government brought suit to collect \$110,000 of the additional 50 per cent on the ground that the pearls had been unstrung for importation.

It was proved that the pearls had been strung temporarily for display purposes only and the Supreme Court, in February, 1912, decided in favor of Mrs. Leeds.

25      In the District Court of the United States for the Southern District of New York.

In the Matter of the Presentment of GEORGE BURDICK as for an Alleged Contempt of Court.

Now comes George Burdick and, for answer to the presentment returned herein by the Grand Jury for the Southern District of New York on the 16th day of April, 1914, alleges:

1. That on or about the 19th day of January, 1914, he appeared before the Grand Jury for the Southern District of New York in compliance with the terms of a paper, purporting to be a subpoena, theretofore served upon him, and was then and there sworn and examined, or attempted to be examined, as a witness and that thereafter and on or about the 23th and 30th days of January, 1914, and the 3rd, 10th and 18th days of February, 1914, he again appeared before said Grand Jury.

2. That thereafter and on or about the 19th day of February, 1914, the said Grand Jury filed its presentment with the Clerk of this Court wherein and whereby this respondent was presented as for an alleged contempt of court.

That a copy of said presentment so filed by said Grand Jury with the Clerk of this Court on February 19, 1914, is hereto annexed marked "Exhibit A" and is hereby made a part hereof as if herein fully set forth at length.

26      3. That thereafter and on the 20th day of February, 1914, this respondent duly filed with the Clerk of this Court his



traverse to said presentment, a copy of which traverse so filed with the Clerk of said court is hereto annexed marked "Exhibit B" and is hereby made a part hereof as if herein fully set forth at length.

4. That thereafter and on the 21st day of February, 1914, the matter duly came on to be heard before the Hon. Learned Hand, Judge of the United States District Court for the Southern District of New York, upon a motion to punish this respondent as for a contempt of court upon the said presentment of the said Grand Jury and, thereafter and on or about the 27th day of February, 1914, the said Judge of the United States District Court duly filed with the Clerk of said court his opinion in said matter.

That annexed hereto marked "Exhibit C" is a copy of said opinion of said court and the same is hereby made a part hereof as if herein fully set forth.

5. That thereafter and on the 12th day of March, 1914, an order was made and entered herein adjudging this respondent to be in contempt of court. For more particularity as to the provisions in said order contained reference is hereby made to a copy thereof which is hereto annexed marked "Exhibit D" and the same is hereby made a part hereof as if herein fully set forth.

6. That thereafter and on or about the 30th day of March, 1914, this respondent appeared before the Grand Jury for the Southern District of New York in compliance with a paper purporting to be a subpoena theretofore served upon him and that thereafter and on the 7th day of April, 1914, he again appeared before said Grand Jury and was then and there sworn and examined or attempted to be examined as a witness.

7. That on April 7, 1914, he was interrogated before said Grand Jury by an Assistant United States Attorney and that on some interrogations propounded to him he made reply and to others thereof he declined to answer and that his reason for so declining to answer such interrogations was and is that he believed that his answers if given would tend to incriminate him.

8. That on the said 7th day of April, 1914, when he appeared before said Grand Jury, a gentleman, who, he is informed, is an Assistant United States Attorney for the Southern District of New York, handed to him a paper and at the time said paper was so handed to this respondent said Assistant United States Attorney stated in substance and effect that the President of the United States had granted to this respondent a full and unconditional pardon for all offenses against the United States which respondent had or might have committed, or taken part in, in connection with the securing, writing about or assisting in the publication of the information in regard to an article which appeared in the "New York Tribune" in its issue of December 31, 1913, and in connection with any other article, matter or thing concerning which he might be interrogated in the Grand Jury proceedings entitled "United States vs. John Doe and Richard Roe" and at the same time respondent was requested to examine said paper purporting to be a pardon and satisfy himself that it was the same warrant of pardon referred

to and set forth in the presentment of February 19, 1914, hereto annexed marked "Exhibit A."

9. That respondent did not accept said paper, has never accepted the same and here and now refuses to accept the same and  
28 denies the power of anyone to compel him to accept it.

10. That the said paper purporting to be a warrant of pardon is not now and never has been in the possession of this respondent and respondent does not know whether the alleged copy of said paper set forth in the presentment of February 19, 1914, and in the presentment of April 16, 1914, is a correct and true copy thereof.

11. Respondent denies the right of the President of the United States to grant to him a full and unconditional pardon or any other sort or kind of pardon for any alleged offense of which this respondent has not been convicted, and alleges that the attempt so to do is unwarranted in law and contrary to the provisions of the Constitution of the United States.

12. That the questions and answers set forth in the said presentment of February 19, 1914, "Exhibit A" hereto annexed, and that the questions and answers set forth in the presentment of April 16, 1914, are substantially correct and that in every case therein where it appears that respondent was asked a question and he declined to answer the same, his so declining to answer was for the reason that he honestly believed that his answer to said question might tend to incriminate him.

13. That under the provisions of the Constitution of the United States respondent has the right, and had the right, to decline to answer any question propounded to him before said Grand Jury if he honestly believed the same would incriminate him, and the attempt on the part of the President of the United States to grant to respondent a pardon, which the said President had no power or authority to grant and which this respondent declined and declines  
29 to accept, did not and does not alter, limit or abridge respondent's rights and privileges in the premises.

14. Upon information and belief that the Grand Jury making this presentment is an illegal body sitting without authority of law and that it is not authorized to investigate into the commission of any alleged crime or to interrogate any witness and particularly this respondent.

15. Upon information and belief that said alleged Grand Jury, in the matter in which this respondent was being interrogated on the 7th day of April, 1914, was not and is not inquiring into the commission of any crime, but is inquiring about matters which do not constitute any crime against the United States and that it therefore had and has no power to interrogate this respondent and this Honorable Court is without power to compel this respondent to answer any interrogations which may be or may have been propounded to him.

16. That by the terms of Article II Section 2 of the Constitution of the United States, the President of the United States only has power to grant reprieves and pardons for offenses against the United

States; that this respondent has not been convicted of, indicted for the commission of, or admitted the commission of any crime or offense against the United States nor has it been proven that this respondent has been guilty of any crime or offense against the United States and that therefore the President of the United States is without power in the premises and had no power to grant to this respondent any pardon of any nature whatsoever.

30 17. That to compel this respondent to answer the questions propounded to him before the said alleged Grand Jury on April 7, 1914, by foisting upon him or attempting to foist upon him the aforesaid unwarranted and illegal paper characterized as a pardon will constitute an invasion of respondent's constitutional rights and result in his being deprived of a property right without due process of law, in violation of Article V of the Amendments to the Constitution.

Wherefore this respondent prays that the said presentment be quashed and that a judgment be entered herein adjudging your respondent not to be in contempt of this court and directing his discharge herein.

Dated, New York, April 20, 1914.

HENRY A. WISE,  
*Attorney for Respondent George Burdick,*  
15 William Street, New York, N. Y.

31 STATE OF NEW YORK,  
*County of New York, ss:*

George Burdick being duly sworn deposes and says that he is the respondent herein; that he has read the foregoing answer to the presentment returned against him herein and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE BURDICK.

Sworn to before me this 20th day of April, 1914.

[SEAL.]

CARL E. WHITNEY,  
*Notary Public, New York County.*

The District Court of the United States of America for the Southern District of New York.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, begun and held in the City of New York, within and for the District aforesaid, on the first Tuesday of February, in the year of our Lord one thousand nine hundred and fourteen, and continued by adjournment to and including the 19th day of February in the year of our Lord one thousand nine hundred and fourteen.

SOUTHERN DISTRICT OF NEW YORK, ss:

The Jurors of the United States of America, within and for the District aforesaid, on their oath make presentment to this Court stating that on the 18th day of February, in the year of our Lord one thousand nine hundred and fourteen, in the course of an investigation that the Grand Jurors were then making into certain alleged violations of Section 37 and Section 39 of the Criminal Code of the United States, George Burdick appeared before the said Grand Jurors in compliance with a subpoena served upon him, directing him to testify and give evidence in regard to an alleged violation of Section 37 and of Section 39 of the Criminal Code of the United States; that the said George Burdick, after being duly sworn, testified as follows:

33 Q. What is your name?

A. George Burdick.

Q. Where do you reside?

A. 411 Ocean Avenue Brooklyn.

Q. Were you an employe of the New York Tribune on the 31st day of December, 1913, and during the month of December, 1913, and, if so, in what capacity?

A. I was employed as City Editor.

Q. I now inform you, Mr. Burdick, that the Grand Jury is and has been investigating alleged violations under Sections 37 and 39 of the Criminal Code of the United States and the commission of a crime that would come under one or both of those sections. When you first appeared before this Grand Jury in the afternoon of January 19th, 1914, was it under a subpoena to appear as a witness in connection with an alleged violation of said Sections 37 and 39 of the Criminal Code of the United States?

A. It was in response to a subpoena and my recollection is that it was in that matter.

Q. And did you thereafter and upon the 26th day of January, 1914, the 30th day of January, 1914, the 3rd day of February, 1914, and the 10th day of February 1914, appear before this Grand Jury, and are you here again today before this Grand Jury in response to that subpoena and to the direction of the foreman of the Grand Jury that you should appear upon the day designated?

A. Yes sir.

Q. Mr. Burdick, I now inform you that the President of the United States has granted you a full and unconditional pardon for all offenses against the United States which you have committed, or may have committed, or taken part in, in connection with the securing, writing about or assisting in the publication of the information incorporated in an article which appeared in the New York Tribune in its issue of December 31st, 1913, headed, "Glove Maker's Gems May be Customs Size" and in connection with any other article, matter or thing, concerning which you may be interrogated in the Grand Jury proceedings entitled United States vs. John Doe and Richard Roe. I now offer you this warrant of pardon. (Warrant of pardon handed to witness). I ask that you will please read that warrant of pardon aloud, (Witness starts to read warrant of pardon), Pardon me, gentlemen, I have a slight cold.

(Whereupon witness again starts to read warrant of pardon, which he holds in his hands, and reads it aloud to its conclusion).

The warrant of pardon is in the following terms:

34 Woodrow Wilson, President of the United States of America, to all to whom these presents shall come, Greeting:

Whereas George Burdick, an editor of the New York Tribune, has declined to testify before a Federal Grand Jury now in session in the Southern District of New York, in a proceeding entitled "United States v. John Doe and Richard Roe," as to the sources of the information which he had in the New York Tribune office, or in his possession, or under his control at the time he sent Henry D. Kingsbury, a reporter on the said New York Tribune, to write an article which appeared in the said New York Tribune, in its issue of December thirty-first, 1913, headed "Glove Maker's Gems may be Customs Size," on the ground that it would tend to incriminate him to answer the questions; and,

Whereas, the United States Attorney for the Southern District of New York desires to use the said George Burdick as a witness before the said Grand Jury in the said proceeding for the purpose of determining whether any employee of the Treasury Department at the Custom House, New York City, has been betraying information that came to such person in an official capacity; and,

Whereas, it is believed that the said George Burdick will again refuse to testify in the said proceeding on the ground that his testimony might tend to incriminate himself;

Now, therefore, be it known, that I, Woodrow Wilson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, do hereby grant unto the said George Burdick a full and unconditional pardon for all offenses against the United States which he, the said George Burdick, has committed or may have committed, or taken part in, in connection with the securing, writing about, or assisting in the publication of the information so incorporated in the aforementioned article, and in connection with any other article.

matter or thing, concerning which he may be interrogated in the said Grand Jury proceeding, thereby absolving him from the consequences of every such criminal act.

35 In testimony whereof I have hereunto signed my name and caused the seal of the Department of Justice to be affixed.

Done at the City of Washington this fourteenth day of February in the year of our Lord One Thousand Nine Hundred and Fourteen, and of the Independence of the United States the One Hundred and Thirty-eighth.

WOODROW WILSON.

By the President:

[Seal Department of Justice.]

J. C. McREYNOLDS,  
*Attorney General.*

36 (Witness leans left arm on the table and holds the warrant of pardon in both his right and left hand.)

(At the conclusion of the reading of the first page of the warrant of pardon, the witness opened the paper, held it in his left hand with the left arm resting upon the table.) And the seal of the Department of Justice, I suppose it is, is affixed thereto?

(Mr. CARSTARPHEN:)

Q. Now, what was your occupation on the 31st day of December, 1913?

A. City Editor.

Q. Of what?

A. Of the New York Tribune.

Q. I show you a copy of the New York Tribune dated December 19th, 1913, and I direct your attention to an article in that paper, in the last column on the first page, with head lines, the first of which is "Plan Fight for Millions Saved by Duty Dodging," and to the article itself, which article commences with the words "Robert C. Heitmeyer of Hoboken," and continues down the entire column and concludes in the first column on page 2, with the words, "In favor of Mrs. Leeds," and I ask you to look at the paper and read the article. Have you read the article?

A. Yes, I have.

Copy of New York Tribune referred to marked for identification "No. 1, Feb. 18-14. R. F. S."

Q. Did you assign, designate, instruct or direct William L. Curtin, a reporter on the New York Tribune, or any other person to write the article to which I have called your attention, or any article along the lines mentioned in this article?

A. I must decline to answer.

Q. On what ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I have already answered that in my just preceding answer.

Q. Just please answer yes or no to this; do you honestly and really and truly believe that the truthful answer to that question might tend to incriminate you?

A. I have already answered that question.

Q. You will answer the question, Mr. Burdick; on what ground do you refuse to answer?

A. I have just given my ground that I have already answered that in my previous answer; I swore when I come in here to tell the truth and the whole truth and nothing but the truth and then in my preceding answer explained that I feared it would incriminate me.

(A JUROR:) The time of the Grand Jury is being taken up by useless dissertation.

37 (Mr. CARSTARPHEN:) State your reason.

A. I am afraid I am at a loss; you ask me to state my reason and when I state it I am rebuked by the Grand Jury.

Q. Do you honestly and really believe that the truthful answer to that question which you have refused to answer on the ground that you thought it might tend to incriminate you, might tend to incriminate you?

A. I have already answered that question.

(Mr. WOOD:)

Q. It is very easy to say you honestly believe it or don't; that don't tend to incriminate you at all; if you honestly believe it, say yes; if you don't believe it, say no.

A. It does not seem to me that insulting questions should necessarily be answered; I swore to tell the truth and I have told the truth and when I said that I believed it would tend to incriminate me I believed so in that instance.

(Mr. CARSTARPHEN:)

Q. Mr. Burdick, I am asking for your own belief and not for any advice that you may have received from counsel; I want to know if, in your own judgment, you honestly and really believe that the truthful answer to that question might tend to incriminate you?

A. The notes of the stenographer will tell you I said I believed it would tend to incriminate me.

Q. Now, do you still state that, in view of the fact that you have read the document I have handed you and know that that document is a warrant of pardon signed by the President of the United States and the effect of which is that no matter what you may testify to in the proceedings now pending before the Grand Jury in the matter of the United States vs. John Doe and Richard Roe that you are absolved from all consequences of your testimony and that such testimony cannot therefore be used against you and that you cannot be incriminated thereby and that you have been pardoned for the or any offenses that you may have committed or may have committed in this matter and that you cannot be prosecuted for anything that you may testify to in connection with the proceedings pending before this Grand Jury?

A. I still fear that my answer might incriminate me.



Mr. CARSTARPHEN: Mr. Foreman, I request that you direct the witness to answer the question asked him and which he has refused to answer.

The FOREMAN: Mr. Burdick, I so direct in the name of the Grand Jury.

(Mr. CARSTARPHEN:)

Q. Do you still refuse, Mr. Burdick?

A. I still have that fear.

Q. Mr. Burdick, you impress me as a man of being of a high grade of intelligence, and you are of course familiar with the English language and the meaning of it and you are in the habit of writing it and using it, and you are a man of judgment and I want again to ask you if, in view of the fact that you have read a warrant of pardon completely absolving you from anything you may have done or left undone in connection with the particular article or any article that you may have written in regard to these matters, that you want to have the Grand Jury understand that your answer would tend to incriminate you?

A. Does that question call for a yes or no?

Q. I would be glad to have you make any explanation you wish.

A. Not being familiar with the law or with this form of pardon or with this unusual form of pardon within my recollection of following the news of this body, I do not feel certain as to its effects and so I still have that fear left in my mind.

(A JUROR:)

A. You are a citizen of the United States, Mr. Burdick?

A. Yes, sir, by birth.

(Mr. CARSTARPHEN:)

Q. Will you please take the pardon, Mr. Burdick, and retire from this room and consult counsel if you have counsel, in reference to it, if you so desire?

A. I do so desire, not being familiar with the law or rather this unusual form of pardon.

Q. Can you get the counsel here quickly?

A. I will endeavor to do so and remain within the call of this body.

(The witness here took the warrant of pardon and left the room.)

39      GEORGE BURDICK recalled.

By Mr. CARSTARPHEN:

Q. I wish to ask you, did you assign, designate, instruct or direct William L. Curtin, a reporter on the New York Tribune, or any other person, to write the article which I have called your attention to, or any article along the lines mentioned in that article?

A. I decline to answer.

Q. On what ground?

A. That I fear it may tend to incriminate me.



Q. Have you taken counsel since you retired from the Grand Jury room?

A. I have.

Q. And have you shown this warrant of pardon to counsel?

A. I have.

Q. Do you decline to answer this question because you honestly and really and truly believe that your answer to the question might tend to incriminate you?

A. I do.

Q. It is not merely because counsel has advised you not to answer that?

A. No.

Q. You are thoroughly familiar with the pardon now, you know what it refers to, you know it absolves you from any punishment on account of any offenses or crimes that you may have committed against the United States in the publication of that article, do you not?

A. No, I do not.

Q. Why do you say that it does not?

A. Because I have not yet accepted this pardon.

Q. Did your counsel tell you to say that?

A. He did not tell me to say that, but he advised me on the matter as to what this pardon consisted of, that being the purpose for which I went out, I understood.

Q. Well, he told you that you had not yet accepted the pardon?

A. I do not recall just what he did tell me in regard to that.

Mr. CARSTARPHEN: Mr. Foreman, I request that you will direct this witness to answer this question.

The FOREMAN: Mr. Burdick, we so direct you to answer that question to this Federal Grand Jury.

(Mr. CARSTARPHEN:)

Q. Do you still decline to answer?

A. I still decline to answer on the same ground as before.

The FOREMAN: Mr. Burdick, the Grand Jury will punish you for contempt if you don't answer, will present you for contempt if you do not answer.

A. With all respect to the Grand Jury and Mr. Carstarphen, I must still decline.

(Mr. CARSTARPHEN:)

Q. Did you furnish William L. Curtin or any other person with the information incorporated in the article, or make any suggestion to him with reference to the matter set forth in the article?

40 A. I decline to answer on the same ground.

Q. Just repeat the ground?

A. On the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to those questions might tend to incriminate you?

A. I do.

A. And you say that notwithstanding the fact that you have had in your hand and have read a warrant of pardon from the President of the United States absolving you from the consequences of every act and from anything that you may testify to, as to which you may be interrogated by this Grand Jury?

A. I do.

Q. Did you have or receive from any person or persons, or any source or sources, any of the information contained in the Article in question prior to the publication thereof?

A. I decline to answer on the ground that it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. Do you say that in view of the fact that you have had in your hand and have read a pardon from the President of the United States absolving you from the consequences of every act and from anything that you may testify to, as to which you may be interrogated, by this Grand Jury?

A. I do.

Q. Do you know from what person or persons, or source or sources the information contained in this article was obtained?

A. I decline to answer on the ground that I fear it may tend to incriminate me.

Q. Do you honestly and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. Do you so state despite the fact that you have held in your hand and read and have taken from this Grand Jury room for the purposes of consulting your counsel, a pardon from the President of the United States, in which it was stated that you were absolved from the consequences of every act and from anything about which you may be interrogated by this Grand Jury this afternoon?

A. I do.

Q. I show you a copy of the New York Tribune dated December 31st, 1913, and direct your attention to an article bearing the headline "Glove Maker's Gems May be Customs Size," the article itself commencing with the words, "A diamond necklace" and continuing down to the column on page one to the words, "Mystery of the in-" and continued on the second page in the fourth column beginning with the words "quity regarding," and ending with the words, "Duty paid," and I ask you to look at the paper and read the article. Have you read the article?

A. I have.

41 Copy of the Tribune last referred to marked for Identification No. 2, Feb. 18-14. R. F. S.

Q. Did you, on the 30th day of December, 1913, or prior to that, assign or instruct or designate or direct Mr. Henry D. Kingsbury, a reporter upon the New York Tribune, to write an article with reference to an alleged importation into the United States by Lucius

Nathan Littauer of a diamond necklace without the payment of duty thereon?

A. I decline to answer on the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state despite the fact that you have held in your hand and have read and have taken from this Grand Jury room for the purpose of consulting with your counsel, a warrant of pardon from the President of the United States in which it was stated that you were absolved from the consequences of every act and from anything about which you may be interrogated by this Grand Jury here this afternoon?

A. I do.

Q. Did you say to Henry D. Kingsbury at the time of your designating him to write an article with reference to the subject, that you had the facts or a report in reference to the matter in the office of the New York Tribune at the time and that you wanted him to go down to interview the Collector of the Port, Dudley Field Malone?

A. I decline to answer on the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. Do you say that despite the fact that you have held in your hand and read and have taken with you from the Grand Jury room a pardon issued by the President of the United States absolving you from the consequences of any testimony you may give in this proceeding?

A. I do.

Q. From what person or persons, or source or sources, and in what manner did you obtain and receive the information in reference to an alleged importation by Lucius N. Littauer into the United States of a diamond necklace without the payment of duty thereon?

A. I decline to answer on the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that to answer that question might tend to incriminate you?

A. I do.

Q. Do you so state despite the fact that you have held in your hand and read and taken with you from the room a warrant of pardon issued by the President of the United States absolving you from the consequences of any testimony you may give in this proceeding?

A. I do.

Q. Mr. Harry David Kingsbury has testified that he wrote such part of the article in the December 31st, 1913 issue of the Tribune to which I have directed your attention as related to Lucius N. Littauer and his alleged importation into the United States of a diamond necklace without the payment of duty,

and referring to an interview had with the Collector of the Port, Dudley Field Malone; and he further testified, in response to a question, "From whom did you get any of the information that you incorporated in the article of which this is a printed copy"—"I got it all from my superiors in the office," and in response to a question, "From whom did you get it?" Mr. Kingsbury answered, "From Mr. Burdick." Mr. King-bury further testified in answer to the question "Did Mr. Burdick tell you everything that you have written in that article."—"everything except my interview with Mr. Malone." Mr. Kingsbury further testified that Mr. Burdick had told him in substance what had been written in the article, and "That the information had come to the office to that effect" and that he, Mr. Kingsbury, thereafter told Mr. Malone the substance of what appeared in the article, and furthermore, told Mr. Malone that the information was in the Tribune office; and Mr. Kingsbury further testified that he had so understood, that the information was in the Tribune office, because Mr. Burdick told him so. Did you tell Mr. Kingsbury what he has testified to in reference to this matter, and, after giving him the information he states you furnished him did you cause him to go to the Custom House to talk to Collector Malone in regard to the matter?

A. I decline to answer on the ground I fear it might tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. Do you so state notwithstanding the fact that you have held in your hand and read and taken with you from the Grand Jury room a warrant of pardon issued by the President of the United States absolving you from the consequences of any testimony you may give in this proceeding?

A. I do.

Q. From what source or sources, person or persons, and in what manner, was the information that you stated to Mr. Kingsbury had come to the office of the Tribune obtained or secured, and by whom?

A. I decline to answer on the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question would tend to incriminate you?

A. I do.

Q. And you so state notwithstanding the fact that you have held in your hand and taken from the Grand Jury room a warrant of pardon issued by the President of the United States absolving you from the consequences of any testimony which you may give in this proceeding or this Grand Jury?

A. I do.

Q. Did you, or to your knowledge, did any reporter, or any person employed in any capacity whatever by the New York Tribune, receive any of the information incorporated in the articles in the issues of the Tribune of December, 19th and December 31st, 1913, headed respectively, "Plan Fight for Millions Saved by Duty Dodging" and "Glove Maker's Gems May be Cus-

om's Size" from any official or employe at and in the office of the Collector of Customs at the Port of New York, the Surveyor of Customs at the Port of New York, the Special Agent of the Treasury Department at the Port of New York, the Appraiser's Store at the Port of New York or from any person or employe or official of the Treasury Department at the Port of New York, or any employe or official of the United States Government whatsoever, or from any person whatsoever under the supervision and control of the United States Government?

A. I decline to answer on the ground that I feel it may tend to incriminate me.

Q. Do you honestly and really and truly believe that your answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state despite the fact that you have had in your hand, read and taken from the Grand Jury room a warrant of pardon issued by the President of the United States wherein you are completely and absolutely absolved from the consequences of any testimony you may give in this proceeding before this Grand Jury?

A. I do.

Q. Did you, or to your knowledge, did any reporter or employe of the New York Tribune receive any of the information incorporated in the article in the issues of December 19th and December 31st, 1913, of the New York Tribune headed respectively, "Plan to Fight for Millions Saved by Duty Dodging", and "Glove Maker's Gems May be Custom's Size", from any person not in the employ of the United States Government, but who obtained such information from any person or persons in the employ of the United States Government in any capacity whatsoever, and particularly from any official or employe at or in the office of the Collector of Customs at the Port of New York, the Surveyor of Customs at the Port of New York, the Special Agent of the Treasury Department at the Port of New York, the Appraiser's Stores at the Port of New York or from any person, employe or official of the Treasury Department at the Port of New York?

A. I decline to answer on the ground that I fear it may tend to incriminate me.

Q. Do you honestly and really and truly believe that the answer to that question might tend to incriminate you?

A. I do.

Q. And do you so state notwithstanding the fact that you have held in your hand and have read and have taken with you from the Grand Jury room a warrant of pardon issued by the President of the United States absolving you from the consequences of any testimony you may give in this proceeding before this Grand Jury this afternoon?

A. I do.

Mr. CARSTARPHEN: Mr. Foreman, I request that you direct this witness to go to the anteroom of the Grand Jury and there await further instructions from this Jury.

The FOREMAN: Mr. Burdick, you are so instructed, go to the ante-room of this Grand Jury and await instructions of this Jury.

(Mr. CARSTARPHEN:)

Q. Mr. Burdick, there is the pardon and I request that you take it.

44 A. I don't believe I want it; I have read it and I am familiar with it.

Q. I want you to answer what you are going to do with that document? (Witness throws warrant of pardon on the table).

A. Well, I wasn't going to do anything with the document.

Q. When you picked it up then, what did you do with it, throw it back on the table?

A. I picked it up, read it and have been reading it right along to make sure what was in it and I tried to take it out for my attorney to tell me what it meant.

Q. What are you going to do with it?

A. I am not going to do anything.

Q. Are you going to leave it right there on the table?

A. I was.

Q. You picked it up a minute ago and you laid it down again on the table.

A. I have picked up things as you have been doing.

Q. I want to know if you have thrown the pardon down on this table and are going out of this room without it?

A. That was my intention.

Q. Is what you want the Grand Jury to understand that the pardon that has been granted to you by the President of the United States absolving you from the consequences of any testimony that you might give before this Grand Jury, that you throw it down on the table and are now leaving the Grand Jury room without it?

A. I doubt if I quite understand the question; I don't want the Grand Jury to understand anything about it.

The FOREMAN: It is yours; why don't you take it with you?

A. I do not want it.

The FOREMAN: It is directed to you by the President of the United States.

(Mr. CARSTARPHEN:)

Q. Is the reason you are now leaving this room and not taking the warrant of pardon with you, you have been consulting with counsel and knowing you were to come back here the counsel told you the next time you came out of the Grand Jury room not to take the pardon with you?

A. No, counsel did not tell me anything like that.

Q. Are you leaving this solely of your own initiative and not under advice of counsel?

A. I am leaving it after I was told by you and the Grand Jury that I could consult with counsel to find out what it meant; as a result of that consultation I am leaving it in here, not that I was directed by the counsel to leave it, but as a result of the consultation.

Q. Why do you refuse to take the warrant of pardon —  
45 you from the room?

A. Because I don't know any reason why I should take it; I don't want it for anything.

Q. You have read it through several times?

A. Very carefully.

(A JUROR:)

Q. The pardon has been issued by the chief executive of the United States, brought to you by the District Attorney and the Federal Grand Jury, you have thrown it on the table, the Federal Grand Jury don't wish its custody; in whose custody do you wish that document to be left?

A. I have no wishes in the matter whatsoever.

The FOREMAN: It is directed to you, in your name, as therein described.

(Mr. CARSTARPHEN:)

Q. Mr. Burdick, you have testified in response to these various questions that to answer them you fear might tend to incriminate you; now, this warrant of pardon that has been issued, absolves you completely from any offenses that you possibly could have committed in connection with testifying before this Federal Grand Jury, you understand that, do you not?

A. I understand that pardon, if effective, would absolve me.

Q. You have then been advised and you understand that providing that pardon is effective, that you would be absolved and that nothing that you would here testify to could incriminate you?

A. I have.

Q. Hold yourself in readiness, please.

The said George Burdick then being directed to withdraw from the Grand Jury room, withdrew from the room.

(After the expiration of ten minutes during which another matter was considered by the Grand Jury, the witnesses, William L. Curtin and George Burdick were together brought into the Jury room and the following proceedings were had):

Mr. WOOD: Mr. Foreman, will you please direct these two witnesses to appear tomorrow afternoon at four o'clock, at which time this matter of the presentment will be taken up?

FOREMAN: You are so instructed Mr. Curtin and Mr. Burdick to appear tomorrow at 4 o'clock before this Grand Jury.

Mr. CURTIN: All right, sir.

Whereupon Messrs. Curtin and Burdick again left the room.

Mr. CARSTARPHEN: Will you please take the custody of the two warrants of pardon that were left here this afternoon and retain them in your possession as foreman of the Grand Jury until they can be attached to the formal presentment which will be made tomorrow afternoon at four o'clock.

The FOREMAN: I shall.



46 The said Grand Jurors thereupon voted that the said George Burdick was in contempt and directed that the entire matter be presented to this Honorable Court in order that such action might be taken in the premises as to this Court may seem just and proper.

H. SNOWDEN MARSHALL,  
*United States Attorney, Southern District of New York.*  
BOYD DECKER,  
*Foreman of the Grand Jury.*

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## EXHIBIT B.

In the District Court of the United States for the Southern District of New York.

In the Matter of the Presentment of GEORGE BURDICK as for an Alleged Contempt of Court.

Now comes the above mentioned George Burdick, and for answer to the Presentment returned against him by the Grand Jury for the Southern District of New York, on the 19th day of February, 1914, and says:

1. That he admits that a paper purporting to be a subpoena was heretofore served upon him and that in compliance with the terms thereof he appeared before the Grand Jury for the Southern District of New York on or about the 19th day of January, 1914, and was then and there sworn and examined, or attempted to be examined as a witness, that thereafter and on or about the 26th and 30th days of January and the 3rd, 10th and 18th days of February he again appeared before said Grand Jury.

2. That on several of these days he was interrogated by an Assistant United States Attorney; and that to some interrogations so propounded to him he made reply and to others thereof he declined to answer; and that his reason for so declining to answer was that he believed that his answers, if given, would tend to incriminate him.

3. That on the 18th day of February he appeared before said Grand Jury and then and there a gentleman, who, he is informed, is an Assistant United States Attorney, handed to him a paper, and at the time the same was so handed to this respondent said

48 Assistant United States Attorney stated that the President of the United States had granted respondent a full and unconditional pardon for all offenses against the United States which respondent had or might have committed, or taken part in, in connection with the securing, writing about or assisting in the publication of the information incorporated in an article which appeared in the New York Tribune in its issue of December 31st, 1913, headed "Glove Maker's Gems May be Customs Size," and in connection with any other article, matter or thing, concerning which he might be interrogated in the Grand Jury proceedings entitled "United States vs. John Doe and Richard Roe;" and at the same time respondent

was requested to read said paper, and respondent then and there did read the same.

4. That respondent did not accept said paper, has never accepted the same and now and here refuses to accept the same and denies the power of anyone to compel him to accept the same.

5. That the said paper is not now and never has been in the possession of this respondent and respondent does not know whether the alleged copy of said paper set forth in the presentment is a correct and true copy thereof.

6. That respondent denies the right of the President of the United States to grant to this respondent a full and unconditional pardon or any other sort or kind of pardon for any alleged offense of which this respondent has not been convicted; and alleges that the attempt so to do is unwarranted in law and contrary to the provisions of the Constitution of the United States.

7. That the questions and answers set forth in the presentment are substantially correct and that in every case therein where it appears that respondent was asked a question and he declined to answer the same, his so declining to answer was for the reason that he honestly believed that his answer to such question might tend to incriminate him.

8. That under the provisions of the Constitution of the United States respondent has the right and had the right to decline to answer any question propounded to him before said Grand Jury if he honestly believes the same will incriminate him, and the attempt on the part of the President of the United States to grant to respondent a pardon, which the said President had no power or authority to grant, and which this respondent declined and declines to accept did not and does not alter, limit or abridge respondent's rights and privileges in the premises.

9. That, on information and belief, the Grand Jury making this presentment is an illegal body, sitting without authority of law and is not authorized to investigate into the commission of any alleged crime or to interrogate any witness and particularly this respondent.

10. That, on information and belief, said alleged Grand Jury in the matter in which this respondent was being interrogated, was not and is not inquiring into the commission of any crime but is inquiring about matters which do not constitute any crime against the United States, and therefore had and has no power to interrogate this respondent and this Honorable Court is without power to compel this respondent to answer any interrogation that may be or may have been propounded to this respondent.

11. That by the terms of Article II, Section 2 of the Constitution of the United States, the President only has power to grant reprieves and pardons for offenses against the United States; and this respondent has not been convicted of, indicted for the commission of, or admitted the commission of any crime or offense against the United States, nor has it been proven that this respondent has been guilty of any crime or offense against the United States and therefore the President of the United States is without

power and had no power to grant to this respondent any pardon of any nature whatsoever.

12. That to compel this respondent to answer the questions propounded to him before the said alleged Grand Jury, by foisting upon him or attempting to foist upon him the aforesaid unwarranted and illegal paper characterized as a pardon will constitute an invasion of respondent's constitutional rights and result in his being deprived of a property right without due process of law, in violation of Article V of the Amendments to the Constitution.

Wherefore this respondent prays that the said presentment be quashed and that a judgment be entered herein adjudging your respondent not to be in contempt of this Court and directing his discharge herein.

HENRY A. WISE,

*Attorney for Respondent, George Burdick.*

15 William Street, New York, N. Y.

STATE OF NEW YORK,

*County of New York, ss:*

George Burdick being duly sworn deposes and says that he is the respondent herein, that he has read the foregoing answer to the presentment returned against him herein and knows the contents thereof; that the same is true of his own knowledge except as

51 to the matters therein stated to be alleged on information and belief and that as to those matters he believes it to be true.

GEORGE BURDICK.

Sworn to before me this 20th day of February, 1914.

BYRD D. WISE,

*Notary Public, New York County.*

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### EXHIBIT C.

United States District Court, Southern District of New York.

UNITED STATES

against

GEORGE BURDICK and WILLIAM L. CURTIN.

This case comes up upon the presentment of a grand jury for contempt. The respondents, the city editor and a reporter of the New York Tribune, refused to answer questions regarding the sources of their information which was the basis of certain articles in that newspaper regarding customs frauds. They contended that disclosure would tend to incriminate them and they refused to answer. Later the President issued full pardons to both, covering any possible crime under these sections, which upon tender, the respondents refused to accept and persisted thereafter in their refusal. Thereupon the grand jury presented them for contempt.

Frank E. Carstarphen for the United States.  
 Henry A. Wise for the respondents.

HAND, D. J.:

There is concededly only one question in the case, which is whether the unaccepted tender of a pardon will toll the privilege against incrimination. This in turn divides into two parts: May the President pardon for a crime of which the individual has not been convicted and which he does not admit? Is acceptance necessary to toll the privilege?

53 I have no doubt whatever that the President may pardon those who have never been convicted. The English precedents are especially pertinent. *U. S. v. Wilson*, 7 Peters 150, 160. Lord Coke, 3 Inst. 233, Chap. 105, Of Pardons, says expressly that the royal prerogative extended as well before as after "attainder, sentence or conviction." Two pardons of Edward I of indicted, but not yet convicted men, are given in full on pages 234, 235. Blackstone, Vol. IV, Chap. XXVI, subdivision IV, 4, gives a pardon as a special plea in bar to an indictment, and rather strangely, in view of later practice, observes that they are good "as well after as before conviction." Later, in Chapter XXVIII, he notes the advantage to the defendant of pleading a pardon in arrest of judgment, in that it avoided the attainder of felony. Chapter XXX deals with reprieves and pardons and subdivision II, 1, shows clearly that pardons before conviction were valid except in impeachments, where they were, however, valid after conviction.

In this country from the very first, Presidents have exercised not only the power to pardon in specific cases before conviction, but even to grant general amnesties. The instances are collected in an opinion of President Taft while Solicitor General. Opinions of the Attorney-General Vol. XX, pp. 339 et seq. They include amnesties by President Washington in 1795, President Adams in 1800, and President Madison in 1815. President Lincoln's amnesty of 1863 may perhaps be thought to depend upon 12 St. at Large 592 and not to be a precedent, though Chief Justice Chase indicates a contrary notion in *U. S. v. Klein*, 13 Wall. 128, 141. President Johnson proclaimed a general unconditional amnesty to all who had taken part in the Civil War on December 25, 1868, and this was held  
 54 valid to forgive forfeitures, even as against a subsequent legislative repeal, *U. S. v. Klein*, supra, *Armstrong v. U. S.*, 13 Wall. 154. President Harrison acted upon the opinion of his Solicitor General, already mentioned, and issued a conditional amnesty to Mormons in 1893, 27 St. at Large 1058.

In *Ex parte Garland*, 4 Wall. 333, the Supreme Court recognized the effect of a pardon granted by President Johnson to restore General Garland, who had never been convicted, to his status as attorney and counsellor of the Supreme Court, though perhaps the discussion was not strictly necessary to the disposition of the case. However, Justice Field's language on page 380 is explicit, and the opinion of the minority does not question the propriety of a pardon for offenses without conviction. President Jefferson appears to have issued a

pardon to a proposed witness in the trial of Aaron Burr, with a view, as here, to tolling the privilege, but, though the witness refused to accept it, I cannot learn that the question of privilege was raised upon the trial itself. The precedent shows, however, that this practice was used as early as 1807.

It is suggested that a pardon may not issue where the person pardoned has not at least admitted his crime. I need not, consider this, because everyone agrees, I believe, that if accepted the acceptance is at least admission enough. It is an admission that the grantee thinks it useful to him, which can only be in case he is in possible jeopardy, and hardly leaves him in position thereafter to  
55 assert its invalidity for lack of admission. And so there arises the second point in the respondents' position, which is that, as they refused the pardon they may still maintain the privilege. It is not necessary to assert that the pardon has any effect till accepted. *U. S. v. Wilson*, 7 Peters 150, 161; *Re De Puy*, 3 Ben. 307; I will for this purpose accept the contrary. When, however, the question is of privilege the witness only needs protection, *Brown v. Walker*, 161 U. S. 591, and he is protected when the means of safety lies at hand. If he obstinately refuses to accept it, it would be preposterous to let him keep on suppressing the truth, on the theory that it might injure him. Legal institutions are built on human needs and are not merely arenas for the exercise of scholastic ingenuity.

There was a suggestion that the privilege might rest upon the jeopardy of some other crime than that pardoned, but unless the witness is to be the sole judge, there is no basis for that position. In this Circuit we have always insisted that the court must see some reasonable ground for the witness's supposed fear, and may inquire so far, *Brown v. Walker*, *supra*.

The respondents are adjudged to be in contempt and are each fined \$500; they may purge themselves by appearing on notice before the present or any subsequent grand jury and testifying fully as to the sources of their information. If they still persist at that time in refusing to answer a commitment may issue in addition until they comply.

February 27th, 1914.

— — —, D. J.

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## EXHIBIT D.

At a Stated Term of the United States District Court for the Southern District of New York Held at the United States Court House and Post Office Building, Borough of Manhattan, City of New York, upon the 12 Day of March, 1914.

Present:

Honorable Learned Hand, District Judge.

In the Matter of GEORGE BURDICK, a Witness Held in Contempt of Court by the Grand Jurors of the United States for the Southern District of New York.

A motion having regularly come on to be heard on the 21st day of February, 1914, before this Court, to punish the respondent, George Burdick, for contempt, upon the presentment of the Grand Jury of the United States for the Southern District of New York, filed on February 19, 1914, for contempt, for refusing to answer questions regarding the sources of his information which was the basis of certain articles in the New York Tribune of December 19, 1913, and December 31, 1913, regarding customs frauds; and the said George Burdick having on February 20, 1914, filed a traverse to said presentment; and it appearing to the Court at the hearing of said motion that the copy of said warrant of pardon, as set forth in said presentment, is a correct and true copy of the original warrant of pardon filed with said presentment; and that said war-

rant of pardon is intended for and directed to said respondent, George Burdick, and that the Grand Jury making said presentment is a legal body, sitting with authority of law, and duly authorized to investigate into the commission of any alleged crime and to interrogate witnesses; and that said Grand Jury was duly inquiring into the commission of a crime or crimes; and said motion having been argued and submitted; and the court having on the 27th day of February, 1914, handed down its written opinion wherein it adjudged the said respondent, George Burdick, to be in contempt and imposed a fine of \$500 upon said respondent with leave to purge himself by appearing on notice before the present or any subsequent Grand Jury, and testifying fully as to the sources of his information, and in the event of his refusal or failure to answer a commitment issue in addition until he so comply.

Now, after hearing F. E. Carstarphen, Assistant U. S. Attorney, in favor of the motion, and Henry A. Wise, Esq., in opposition,

Now, on motion of H. Snowden Marshall, U. S. Attorney, it is

Ordered that the respondent, George Burdick, is in contempt, and that he pay a fine of \$500, with leave to said respondent to purge himself by appearing on notice before the present or any subsequent grand jury, and testifying fully, as to the sources of his information which was the basis of certain articles in the New

York Tribune regarding customs frauds, and in the event of his refusal or failure to so answer, a commitment may issue in addition until he shall so comply.

LEARNED HAND,  
*U. S. District Judge.*

(Filed April 20, 1914.)

58 At a Stated Term of the United States District Court for the Southern District of New York Held at the United States Court House and Post Office Building, Borough of Manhattan, City of New York, upon the 20th Day of April, 1914.

Present:

Honorable Learned Hand, District Judge.

In the Matter of GEORGE BURDICK, a Witness Held in Contempt of Court by the Grand Jurors of the United States for the Southern District of New York.

Upon the presentment of the Grand Jury of the United States for the Southern District of New York, filed in this Court on February 19, 1914, and upon a traverse to said presentment filed in this Court February 20, 1914, and upon the order of this Court duly made and filed on the 12th day of March, 1914, and the recitals therein contained by which order the respondent, George Burdick, was adjudged to be in contempt and to pay a fine of \$500 with leave to said respondent to purge himself by appearing on notice before the present or any subsequent Grand Jury and testifying fully as to the sources of his information, which was the basis of certain articles in the New York "Tribune" regarding customs frauds, and in the event of his refusal or failure to so answer, a commitment might issue in addition until he should so comply; and upon reading the presentment of the Grand Jury of the United States for the

58½ Southern District of New York, filed in this Court on the 16th day of April, 1914, and the traverse to said presentment filed on the 20th day of April, 1914, and upon all the papers in this proceeding, and it appearing to the Court that the said respondent, George Burdick, pursuant to the said order of this Court, filed on the 12th day of March, 1914, appeared upon notice before the Grand Jury of the United States for the Southern District of New York and refused and failed to purge himself of said contempt as provided in said order, and it appearing that the copy of said warrant of pardon as set forth in said presentment, filed on February 19, 1914, is a correct and true copy of the original warrant of pardon filed with said presentment, and that said warrant of pardon is intended for and directed to said respondent, George Burdick;

Now, upon motion of H. Snowden Marshall, United States Attorney, it is hereby ordered and adjudged that the said respondent, George Burdick, has failed and refused to purge himself of said contempt; and it is further ordered that the said respondent, George



Burdick, pay a fine of \$500, and that he be committed to the custody of the United States Marshal for the Southern District of New York until he shall purge himself of said contempt, or until the further order of this Court in the premises.

LEARNED HAND,  
U. S. District Judge.

Filed April 20, 1914.

59 United States District Court, Southern District of New York.

In the Matter of an Alleged Contempt of Court of GEORGE BURDICK.

*Assignments of Error.*

Now comes the above named George Burdick, plaintiff-in-error, by his attorney, Henry A. Wise, and files the following assignment of errors upon which he will rely upon the prosecution of the writ of error to the United States Supreme Court sued out by him herein to review the order made on the 20th day of April, 1914, ordering and adjudging him to be guilty of a contempt of court and committing him to custody, as follows:

1. That the court erred in ordering and adjudging the said George Burdick to be guilty of a contempt of court by its said order entered on said date.

2. That the court erred in not adjudging him to have been not guilty of a contempt of court.

3. That the court erred in making and granting said order adjudging him in contempt of court and committing him to custody.

4. That the court erred in refusing to make and grant an order ordering and adjudging that he was not in contempt of court and declining to commit him to custody.

5. That the court erred in adjudging that the alleged warrant of pardon herein had any force or effect whatsoever.

6. That the court erred in not adjudging that the alleged warrant of pardon herein was null, void and of no effect.

60 7. That the court erred in adjudging that the alleged warrant of pardon, unaccepted, operated to take away from him his constitutional right against self-incrimination.

8. That the court erred in not adjudging that he could not, by virtue of said alleged warrant of pardon, unaccepted, be compelled to give evidence which might tend to incriminate him.

9. The court erred in not adjudging that there is no power in the President of the United States to issue or grant a pardon where there is no evidence that the person to whom such pardon is attempted to be issued or granted has committed any offense against the United States.

10. That the court erred in not adjudging that the attempted issuance and granting of said alleged warrant of pardon was an unauthorized exercise of, or attempt to exercise, a power not vested in the President of the United States by the Constitution or any of the laws of the United States.

11. That the court erred in not adjudging that the said alleged warrant of pardon, not having been accepted, had no force or effect whatsoever and was null, void and of no validity.

12. That the court erred in holding that the said alleged Grand Jury was lawfully inquiring into any offense against the United States.

13. That the court erred in not holding that said alleged Grand Jury was not lawfully inquiring into any offense against the United States.

14. That the court erred in holding that said alleged Grand Jury was lawfully inquiring into any matter about which he could be examined as a witness before such body.

15. That the court erred in not holding that said alleged Grand Jury was not lawfully inquiring into any matter about which he could be examined as a witness before such body.

16. That the court erred in not holding that said alleged Grand Jury was not inquiring as to any offense by anybody against the United States and therefore had no right to examine him as a witness.

Wherefore, the said George Burdick, plaintiff-in-error, prays that the order and judgment made herein on the 20th day of April, 1914, ordering and adjudging him, the said George Burdick, to be in contempt of court, and committing him to custody, for the errors aforesaid, and for errors in the record and proceedings herein, may be reversed and altogether held for nothing and that the said plaintiff-in-error may be restored to all things which he has lost by reason of said order and judgment and that the said District Court of the United States for the Southern District of New York be directed to vacate and set aside said order and judgment and directed to enter an order and judgment ordering and adjudging that the said George Burdick is not in contempt of court, and for such other and further relief as to the court may seem proper.

Dated, New York, N. Y., April 20th, 1914.

HENRY A. WISE,

*Attorney for George Burdick, Plaintiff-in-Error.*

15 William Street, New York, N. Y.

Filed April 21, 1914.

62 United States District Court, Southern District of New York.

In the Matter of an Alleged Contempt of Court of GEORGE BURDICK.

George Burdick, feeling aggrieved by the order of the court made on the 20th day of April, 1914, ordering and adjudging him to be in contempt of court, comes now by Henry A. Wise, his attorney, and petitions said court for an order allowing said George Burdick to prosecute a writ of error to the Honorable Supreme Court of the United States, under and according to the laws of the United

States in that behalf made and provided; and also that an order be made fixing the amount of security which said defendant shall give and furnish on said writ of error and that upon the giving of such security all other proceedings in this court be suspended and staid until the determination of said writ of error of the Supreme Court of the United States. And your petitioner will ever pray.

Dated, New York, N. Y., April 20th, 1914.

HENRY A. WISE,

*Attorney for George Burdick.*

15 William Street, New York, N. Y.

Filed April 21, 1914.

63 By the Honorable Learned Hand, one of the Judges of the District Court of the United States for the Southern District of New York, in the Second Circuit, to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the United States District Court for the Southern District of New York, wherein George Burdick is plaintiff-in-error and you are defendant-in-error, to show cause if any there be, why the order and judgment in said writ mentioned should not be corrected and speedy justice should not be done in that behalf.

Given under my hand at the Borough of Manhattan, in the City of New York, in the District and Circuit above named, this 20th day of April, in the year of our Lord One Thousand Nine Hundred and Fourteen, and of the Independence of the United States the One Hundred and Thirty Eighth.

LEARNED HAND,

*Judge of the District Court of the United States  
for the Southern District of New York in the  
Second Circuit.*

Filed April 21, 1914.

64 United States District Court, Southern District of New York.

GEORGE BURDICK, Plaintiff-in-Error,

vs.

UNITED STATES OF AMERICA, Defendant-in-Error.

It is hereby stipulated and agreed that the record in the above entitled matter shall consist of the following papers now on file with the Clerk of this Court.

Presentment filed April 16, 1914, and copy of pardon and copies of articles appearing in the New York Tribune therein referred to, Traverse to Presentment filed April 20, 1914, Order of Commitment dated April 20, 1914,

Petition for Writ of Error, dated April 20, 1914,  
Writ of error, and order following writ, dated April 20, 1914,  
Citation dated April 20, 1914,  
Assignments of Error dated April 20, 1914.  
New York, April 29th, 1914.

HENRY A. WISE,  
*Attorney for Plaintiff-in-Error.*  
H. SNOWDEN MARSHALL,  
*U. S. Attorney, S. D. of N. Y.*

65 United States District Court, Southern District of New York.

GEORGE BURDICK, Plaintiff-in-Error,  
vs.  
UNITED STATES OF AMERICA, Defendant-in-Error.

It is hereby stipulated and agreed, that the foregoing is a true transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

Dated May 4th, 1914.

HENRY A. WISE,  
*Attorney for Plaintiff-in-Error.*  
H. SNOWDEN MARSHALL,  
*Attorney for Defendant-in-Error.*

66 UNITED STATES OF AMERICA,  
*Southern District of New York, ss:*

GEORGE BURDICK, Plaintiff-in-Error,  
vs.  
UNITED STATES OF AMERICA, Defendant-in-Error.

I, Alexander Gilchrist, Jr., Clerk of the District Court of the United States of America for the Southern District of New York, do hereby Certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said Court to be hereunto affixed, at the City of New York, in the Southern District of New York, this 5th day of May, in the year of our Lord one thousand nine hundred and fourteen and of the Independence of the said United States the one hundred and thirty-eighth.

[Seal District Court of the United States, Southern Dist.  
of N. Y.]

ALEX. GILCHRIST, JR., *Clerk.*

Endorsed on cover: File No. 24,204. S. New York D. C. U. S. Term No. 471. George Burdick, plaintiff-in-error, vs. The United States. Filed May 9th, 1914. File No. 24,204.